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09/416,210	10/08/1999	WILLIAM LANE	ESPD:177/GLE	5873

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EXAMINER

DEXTER, CLARK F

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 12/03/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
**09/416,210**

Applicant(s)  
**Lane et al.**

Examiner  
**Clark F. Dexter**

Art Unit  
**3724**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1) ☒ Responsive to communication(s) filed on Oct 5, 2001

2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

4) ☒ Claim(s) 45-52 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 45-52 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9) ☒ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some\* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

15) ☒ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

20) ☐ Other:

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## **DETAILED ACTION**

### ***Continued Prosecution Application***

1. The request filed on October 5, 2001 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/416,210 is acceptable and a CPA has been established. An action on the CPA follows.

### ***Preliminary Amendment***

2. The preliminary amendment filed October 5, 2001 has been entered. It is noted that this amendment cancels all previous claims and includes new claims directed to a different invention than the previous claims under the present serial number; specifically, the new claims are directed to the invention of Group I, which was prosecuted in parent application 08/853,781.

### ***Drawings***

3. The drawings are objected to because of the following informalities:

In Figures 2-6, ✓ numerals 28 and 46 are both used to represent the handle.

In Figures 2 and 3, ✓ both numerals 26 and 34 are used to represent the front rail.

In Figures 11 and 12, ✓ the lead line for numeral 96 should end in an arrow head or the like.

Appropriate correction is required.

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*Specification*

4. The disclosure is objected to because of the following informalities:

On page 6, line 17 and throughout the specification, numeral 34 is used to represent the front rail, which has already been designated as numeral 26; similarly, in line 22 and throughout the specification, numeral 46 is used to represent the handle cam, which has already been designated as numeral 28.

On page 7, line 1 and throughout the specification, “rod fence lock” appears to be inaccurate, and it seems that it should read --fence lock rod--.

Appropriate correction is required.

*Claim Rejections - 35 USC § 112, 1st paragraph*

5. Claims 45-52 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention

The original disclosure does not appear to provide support for a “handle cam” or for a “camming portion” as referred to in the conventional sense. Specifically, in further considering applicant’s amendments and remarks, that there is no “camming” action that occurs. Rather, it appears that there is an eccentric connection of the rod 50 to the handle 46 such that rotation of the handle 46 tensions the rod 50. Further, if this is the case, then it is not clear as to what

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structure is being indicated by numeral 62 in Figure 4. In general, it is not clear how the handle cam operates to tension the rod 50. Further clarification of the invention is required.

***Claim Rejections - 35 USC § 112, 2nd paragraph***

6. Claims 45-52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 45, lines 10-12, the recitation "to eliminate direct contact between the camming portion and the housing" renders the claims vague and indefinite, particularly since it is not clear how any "camming" can occur if there is no contact by the camming surface (i.e., if there is no "camming" action, then it is not clear how the surface be a camming surface).

In claim 50, lines 14-16, the recitation "to eliminate direct contact between the camming portion and the housing" renders the claims vague and indefinite, particularly since it is not clear how any "camming" can occur if there is no contact by the camming surface (i.e., if there is no "camming" action, then it is not clear how the surface be a camming surface).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 45-50, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Theising, pn 5,181,446 (hereafter Theising '446).

Theising '446 discloses a fence assembly with almost every structural limitation of the claimed invention as best understood from the claims including a fence channel (e.g., 17), a head assembly (e.g., 15) including a means for engaging and locking the fence channel including a handle cam (e.g., 69) of a single piece construction, a locking pawl (e.g., 43) of a single piece construction, and a rod (e.g., 55). Theising '446 lacks at least one annular bearing as claimed, and more specifically, two annular bearings.

The Examiner takes Official notice that it is old and well known in the art to provide various types of bearings including annular bearings on rotatable connections to reduce the rotational friction of the joint. Therefore, it would have been obvious to one having ordinary skill in the art to provide a bearing including one or more annular bearings on the rotational joint between the handle cam (69) and the rod element (55) of Theising to reduce the resistance of the

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rotational movement due to friction such that the only remaining significant friction source is the sliding contact between the contacting elements.

Further, the Examiner takes Official notice that eccentric connections are old and well known in the art as a known conventional way to provide tension to an element. Therefore, it would have been obvious to one having ordinary skill in the art to provide an eccentric connection between the rod and handle of Theising '446 for the well known benefits.

Regarding claim 47, Theising '446 lacks the cam lever being constructed out of injection-molded plastic. However, the Examiner takes Official notice that it is old and well known to construct parts from injection-molding to gain well known benefits including easier and less expensive manufacturing and reduced weight. Therefore, it would have been obvious to one having ordinary skill in the art to construct the handle 69 of Theising '446 by injection-molding for the well known benefits including those described above.

9. Claims 51 and 52, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Theising, pn 5,181,446 (hereafter Theising '446) as applied to claim 50 above, and further in view of Tautz, pn 1,938,548 (hereafter Tautz '548).

Theising '446 discloses a fence assembly with almost every structural limitation of the claimed invention including a microadjust assembly, wherein the microadjust assembly includes a knob handle (e.g., 95), a bumper (e.g., 101), a spring (e.g., 97). Theising lacks the bumper comprising an elastomeric material, specifically rubber, and defining a substantially smooth outer surface and cooperating with a smooth surface on the rail. Tautz '548 discloses that it is well

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known to provide a bumper having a smooth surface which cooperates with the smooth surface of the fence (see page 5, lines 56-84). Such a configuration provides well known benefits including ease and reduces costs of manufacture since cooperating teeth do not have to be formed in the bumper and rail. Therefore, it would have been obvious to one having ordinary skill in the art to provide a bumper having a smooth surface which cooperates with the smooth surface of the fence. Further, regarding the material of the bumper, the Examiner takes Official notice that it is old and well known in the art to make such friction-type gear wheels from an elastomeric material, particularly rubber, to enhance the friction grip between the cooperating surfaces. Therefore, it would have been obvious to one having ordinary skill in the art to make the bumper from an elastomeric material, including rubber, to gain the well known benefits including that described above.

### ***Response to Arguments***

10. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. It is noted that applicant's arguments reference the '210 application, which is the present application, rather than the parent application, 08/853,781.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clark Dexter whose telephone number is (703) 308-1404. The examiner's typical work schedule is Monday, Tuesday, Thursday and Friday, and he can be reached during normal business hours on these days.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Allan Shoap, can be reached at (703)308-1082.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-1148. The fax numbers for this group are: formal papers - (703)305-3579; informal/draft papers - (703)305-9835.



**Clark F. Dexter**  
**Primary Examiner**  
**Art Unit 3724**

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November 19, 2001